

Private foundations; supporting organization; integral part test. An exempt trust whose trust instrument designates a bank as sole trustee and provides that 75 percent of the trust income be distributed annually to a specified church with the remaining 25 percent to accumulate until the original corpus doubles, at which time the entire annual income is to be distributed to the church, does not satisfy the 'substantially all' requirement of the integral part test set forth in section 1.509(a)-4(i)(3)(iii)(a) of the regulations and is not a supporting organization.

Advice has been requested whether the trust described below satisfies the 'substantially all' requirement of section 1.509(a)-4(i)(3)(iii)(a) of the Income Tax Regulations and is a supporting organization within the meaning of section 509(a)(3) of the Internal Revenue Code of 1954.

The trust is recognized as exempt from Federal income tax under section 501(c)(3) of the Code.

The trust instrument designates a bank as the sole trustee of the trust. The instrument further provides that 75 percent of the trust's income is to be distributed annually to a specified church described in sections 170(b)(1)(A)(i) and 509(a)(1) of the Code. The remaining 25 percent of the trust's income is to be accumulated until such time as the original corpus is doubled. At that time, the entire annual income of the foundation is to be distributed to the church.

Section 509(a)(3)(B) of the Code provides that a supporting organization must be operated, supervised, or controlled by or in connection with one or more organizations described in section 509(a)(1) or (2).

Section 1.509(a)-4(f) of the regulations provides that, in order to meet the requirements of section 509(a)(3)(B) of the Code, an organization must be operated, supervised, or controlled by or in connection with one or more publicly supported organizations. This test is met if the organization is: (1) 'operated, supervised, or controlled by' one or more publicly supported organizations (section 1.509(a)-4(g)); (2) 'supervised or controlled in connection with' one or more publicly supported organizations (section 1.509(a)-4(h)); or, (3) 'operated in connection with' one or more publicly supported organizations (section 1.509(a)-4(i)).

Because the sole trustee in this case is a bank that was not appointed by the specified church, and since management or control of the trust does not rest with those who manage or control the specified church, the trust is neither operated, supervised, or controlled by nor supervised or controlled in connection with the specified church.

To be considered as operated in connection with one or more section 509(a)(1) or (2) organizations, an organization must meet both the 'responsiveness test' of section 1.509(a)-4(i)(2) of the regulations and the 'integral part test' of section 1.509(a)-4(i)(3).

Section 1.509(a)-4(i)(3)(iii)(a) of the regulations provides that one requirement of the integral part test will be satisfied if the supporting organization makes payments of substantially all of its income to or for the use of one or more publicly supported organizations.

Although the term 'substantially all' is not defined in the regulations under section 509 of the Code, it is defined in the Foundation Excise Tax Regulations issued under sections of the Code which were promulgated under the Tax Reform Act of 1969 as was section 509.

Section 53.4942(b)-1(c) of those regulations provides that for the purposes of section 4942(j)(3)(A) of the Code (relating to qualifying distributions by private operating foundations) the term 'substantially all' shall mean 85 percent or more.

For purposes of the integral part test, the term 'substantially all' is considered to have the same meaning of 85 percent or more that it has in section 53.4942(b)-1(c) of the regulations. Accordingly, because the trust described above distributes less than 85 percent of its income to or for the use of one or more publicly supported organizations, it does not satisfy the 'substantially all' requirement of the integral part test set forth in section 1.509(a)-4(i)(3)(iii)(a) of the regulations and is not a supporting organization within the meaning of section 509(a)(3) of the Code.